

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:

TAIYO CORPORATION
A Georgia Corporation

Debtor

SAVANNAH SHERATON
CORPORATION

Movant

v.

TAIYO CORPORATION

Respondent

Chapter 11 Case

Number 93-41092

AMENDED ORDER

The Order on Motion for Additional Stay Relief and for Expedited Hearing entered on January 5, 1994, is amended to substitute the following language in footnote "2" on page 6 in lieu of the original text:

² The first and third sentences of Rule 9021 are critical in understanding how Rule 9021 differs from Rule 58. The first sentence states that "[e]xcept as otherwise provided herein, Rule 58 F.R.Civ.P. applies in cases under the Code." One of the things which Rule 9021 "otherwise provides" is found in the third sentence, which states that "[a] judgment is effective when entered as provided in Rule 5003". In contrast, Rule 58 provides that "[a] judgment is effective *only when so set forth* [on a separate document] *and* when entered as

provided in Rule 79(a)." (emphasis added). Thus, Rule 9021 does not contain an express requirement, as Rule 58 does, that a judgment be set forth on a separate document to be "effective".

Cases applying Rule 9021 have generally held that judgments must be entered upon a separate document. *See e.g., Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989) *cert. denied*, 494 U.S. 1080, 110 S.Ct. 1809 (1990); *Matter of Seiscom Delta, Inc.*, 857 F.2d 279 (5th Cir. 1988); *Matter of Kilgus*, 811 F.2d 1112 (7th Cir. 1987); *In re Ozark Restaurant Equipment Co.*, 761 F.2d 481 (8th Cir. 1985); *In re Rehbein*, 60 B.R. 436 (9th Cir. BAP 1986); *In re Campbell*, 48 B.R. 820 (D.Colo. 1985). The holdings are not unanimous, however. *See Hendrick v. Avent*, 891 F.2d 583, 586 (5th Cir. 1990), *cert. denied*, 498 U.S. 819, 111 S.Ct. 64 (1990).

Significantly, none of the above-cited cases involved orders on motions for relief from the automatic stay. In fact, with the possible exception of *Reid v. White Motor Corp.*, the entry of a separate judgment was required, not due to the text of Rule 9021, but under Bankruptcy Rule 5003(c) in each of the above-cited cases because they involved awards of monetary damages (*Seiscom*, *Kilgus* and *Ozark*) or affected title to property (*Hendrick* and *Rehbein*).

The Clerk is directed to enter a substitute page 6 with the full text as shown on "Amended Page 6" attached hereto and to serve a copy of this Amended Order and the page to be inserted on all parties who previously received notice of the filing of the original Order.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 6th day of January, 1994.